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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

THOMAS PALMER, Individually and on  
Behalf of Others Similarly Situated.

Plaintiff,

V.

APPLE INC., a California Corporation.

**Defendant.**

No.

## CLASS ACTION

**COMPLAINT FOR VIOLATION OF  
CALIFORNIA CONSUMER  
PROTECTION LAWS**

## DEMAND FOR JURY TRIAL

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1 Plaintiff Thomas Palmer brings this action on behalf of himself and all others similarly situated  
 2 (“Plaintiff”) against Apple, Inc. (“Apple” or “Defendant”). Plaintiff’s allegations against Defendant  
 3 are based upon information and belief and upon investigation of Plaintiff’s counsel, except for  
 4 allegations specifically pertaining to Plaintiff, which are based upon each Plaintiff’s personal  
 5 knowledge.

## 6 I. OVERVIEW

7 1. Consumers who pay a premium for Apple’s newest and most sophisticated iPhones  
 8 can reasonably expect that their iPhone will include the most sophisticated hardware.  
 9 Correspondingly, consumers can also expect that their iPhone will include the sophisticated software  
 10 necessary to operate this new generation of hardware. But when a defect in Apple’s software  
 11 precludes the hardware from operating properly, consumers are deprived of the full benefit of their  
 12 iPhones. This is especially true when the defect causes the consumer to use vast quantities of costly  
 13 cellular data without their knowledge. In such circumstances, Apple should act quickly to provide a  
 14 technical fix as soon as it learns about the issue. When Apple fails to repair or even disclose the  
 15 defect for a period of years, consumers are left holding the bag to work out the mess with their  
 16 wireless carriers. This is wrong and Apple should be required to make restitution to its users.

17 2. From 2010 to 2012, Apple was competing fiercely with Samsung in the mobile device  
 18 market. Samsung had overtaken Apple as leader in mobile device sales and Apple was looking to  
 19 catch up.<sup>1</sup> Apple’s next iPhone had to make a big splash to win back market share from Samsung’s  
 20 Android. Apple was under heavy pressure to deliver a revolutionary product.

21 3. In September, 2012, Apple released the iPhone 5: its answer to Samsung’s Android  
 22 challenge. The iPhone 5 included the brand new A6 chip. The A6 chip was novel in two ways.  
 23 First, it included a dual-core central processing unit (“CPU”) called Swift (the “Swift CPU”) that was  
 24 responsible for basic operating system and app program execution and thus the major functionality of  
 25 the phone. The Swift CPU was an improved version of the dual-core CPU from prior generations of

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26 27 <sup>1</sup> Ingrid Lunden, *Apple’s iPhone Overtakes Android In US Sales for the First Time Since 2012*,  
 Techcrunch.com (Feb. 4, 2015) <http://techcrunch.com/2015/02/04/apples-iphone-overtakes-android-in-us-sales-for-the-first-time-since-2012/> (last visited Dec. 1, 2015).

1 iPhones. Apple presented the A6 as offering combined CPU and graphics speeds that were roughly  
 2 twice as fast as its predecessor.<sup>2</sup> Apple also presented the iPhone 5 as offering its users the ability to  
 3 stream data through Wi-Fi or via LTE: each at much faster speeds than prior iPhones.<sup>3</sup> Second, the  
 4 A6 also contained a brand new tri-core graphics processing unit (GPU). GPU's are electronic  
 5 circuits specially designed to convert data into images, animations, and graphics. The iPhone 5's  
 6 powerful new GPU was much faster and more efficient at processing large blocks of audio and video  
 7 data compared to GPU's in previous iPhones. As a result, iPhone 5 users could enjoy a significantly  
 8 enhanced video streaming experience including shorter buffering times and improved screen  
 9 resolution.

10       4.     The iPhone 5 included the new iOS 6 operating system. While iOS 6 included a  
 11 number of key features immediately visible to the user, iOS 6 was also responsible for supporting the  
 12 iPhone 5's hardware, including its powerful A6 processor. "Perhaps one of the most important  
 13 features of iPhone is the software it runs. And [Apple had] iOS 6 – the latest version of the world's  
 14 most advanced operating system."<sup>4</sup>

15       5.     Indeed, Apple presented the iPhone 5 as a product that would revolutionize the user  
 16 experience for mobile devices: delivering lightening fast internet and video over Wi-Fi or LTE,  
 17 hundreds of new apps, a wider screen, and all inside a thinner phone.

18       6.     But soon after the iPhone 5's release, consumers began noticing a pattern that Apple  
 19 had not advertised when it introduced the iPhone 5. Despite being connected to Wi-Fi signals,  
 20 iPhone 5 purchasers experienced massive surges in the amount of cellular data they were using each  
 21 month. Because most cellular plans, at that time, only allowed consumers a limited amount of data  
 22 each month for a set price and charged more for any data overages, consumers, who were typically  
 23 monitoring their usage to avoid overages, began to routinely exceed their data limits and incur hefty

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24  
 25       <sup>2</sup> Youtube.com, Apple Special Event 2012- iPhone Introduction  
<https://www.youtube.com/watch?v=82dwZYw2M00> at 12:00 min (last visited Nov. 19, 2015)

26       <sup>3</sup> Youtube.com, Apple Special Event 2012- iPhone Introduction  
<https://www.youtube.com/watch?v=82dwZYw2M00> at 10:00 min (last visited Nov. 19, 2015).

27       <sup>4</sup> Youtube.com, Apple iOS 6 Presentation!!! September 12, 2012)  
<https://www.youtube.com/watch?v=GkSj7LSpADc> at 00:00 min (last visited Nov. 19, 2015).

1 data fees as a result. Many felt compelled to increase their monthly subscription data plan limits in  
 2 order to avoid the costly additional and unpredictable penalty charges.

3       7.     What consumers were experiencing was the result of a defect in how iOS 6 interacted  
 4 with the iPhone 5's hardware (the "Defect"). In previous generations of iPhones, streaming audio-  
 5 video decompression, decoding, and presentation to the display was handled by less powerful GPU's  
 6 and required assistance for the CPU. In the iPhone 5, when a consumer streamed high volumes of  
 7 data for a period even as short as a couple of minutes, the GPU would take over all video  
 8 decompression, decoding, and presentation to the display. As a result, the Swift CPU no longer  
 9 played a role in the video decompression, decoding, and presentation process, the Swift CPU would  
 10 go into sleep mode to conserve battery life. Once the Swift CPU was asleep, the iPhone 5's  
 11 operating system would automatically trigger the Wi-Fi connection to end and the phone would  
 12 switch from streaming data via a Wi-Fi signal to streaming data via a cellular signal. The iOS 6  
 13 should not have disabled the Wi-Fi when the Swift CPU went to sleep and consumers should not  
 14 have incurred data usage charges as they should have been able to continue streaming their data via  
 15 Wi-Fi. Because the phones switched to cellular connections instead of Wi-Fi, consumers unwittingly  
 16 and unknowingly used excessive amounts of cellular data without any warning or notice from Apple.

17       8.     Apple became aware of this issue almost immediately. Consumers contacted Apple  
 18 and their carriers, and they began commenting on Apple's own Internet message boards asking  
 19 whether other consumers were experiencing the same phenomena. Various news outlets also began  
 20 taking notice of the issue. Within days, Apple, without admitting that any defect existed, provided a  
 21 repair for the Defect for iPhone 5 owners on the Verizon network. Inexplicably however, Apple did  
 22 not repair the defect for iPhone 5 consumers who were subscribers to the AT&T Mobility ("AT&T")  
 23 network. In fact, while Apple provided a repair to the Defect within *two weeks* to iPhone 5 owners  
 24 on the Verizon network, iPhone 5 and 5s owners on the AT&T network had to wait over *two years*  
 25 for a repair. Despite multiple updates to iOS and even new hardware in subsequent generations of  
 26 the iPhone, Apple did not fix or even disclose the Defect to AT&T's iPhone 5, 5S, 5C and iPhone 6  
 27 and 6 plus owners. As a result, the Defect affected all versions iOS 6 and 7 and was only resolved  
 28 with the release of iOS 8.1 in October 2014. Through this entire time period, Apple materially

1 omitted and failed to disclose the Defect to consumers. By omitting this material information,  
 2 Consumers were charged hefty fees for data they did not intend to use and had sought not to use,  
 3 because they had initiated the connections through their Wi-Fi networks to avoid such charges.  
 4 Apple's non-disclosure also deprived consumers of the opportunity to make an informed choice-  
 5 especially given the stiff competition from Samsung-as to whether an iPhone was the right mobile  
 6 device for them which did not have this issue.

7       9. As discussed more fully below, Apple's omissions regarding the Defect violates  
 8 (i) California's Business & Professions Code §§ 17200, *et seq.* (the Unfair Competition Law or  
 9 "UCL"); (ii) California Civil Code §§ 1750, *et seq.* (the Consumers Legal Remedies Act or  
 10 "CLRA"); and (iii) California's Business & Professions Code §§ 17500, *et seq.* (the False  
 11 Advertising Law or "FAL").

## 12           **II. PARTIES**

13       10. Plaintiff Thomas Palmer is a citizen of the State of California, residing in Aptos.  
 14 Plaintiff is an AT&T wireless customer who purchased an iPhone 5 in May, 2013 and an iPhone 5s  
 15 in June 2014 both from the AT&T Wireless store located in Capitola, California. Plaintiff Palmer  
 16 saw the advertisements and statements which were material to his decision to purchase. Plaintiff  
 17 Palmer's iPhone and iPhone 5s were used to stream video via YouTube, snapchat, and Netflix in  
 18 areas with Wi-Fi. Plaintiff would not have purchased an iPhone 5 or 5s nor paid as much had these  
 19 advertisements disclosed the truth regarding the Defect.

20       11. Defendant Apple is a designer, developer, and retailer of computer software, online  
 21 services, and consumer electronics including the iPhone. Apple markets and designs the iOS  
 22 operating system for its mobile devices. All versions of iOS 6 and iOS 7 contained the Defect. iOS  
 23 8.0 also contained the Defect. In addition to AT&T versions of the iPhone 5, the iPhone 5s and  
 24 iPhone 5c ran on iOS which contained the defect, (collectively "Apple Devices"). Apple is a  
 25 corporation domiciled in the State of California, with its principal place of business located at 1  
 26 Infinite Loop, Cupertino, California.

## 27           **I. JURISDICTION AND VENUE**

12. This Court has diversity jurisdiction over this action under the Class Action Fairness Act of 2005, pursuant to 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, exclusive of interest and costs. Also, given that Apple markets and sells its products nationwide, the Class includes members who are citizens of a different state than Defendant.

13. This Court has personal jurisdiction over the Defendant because the Defendant is headquartered in California and conducts substantial business in this district and throughout the State of California.

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c), because Defendant, as a corporation, is “deemed to reside in any judicial district in which [it is] subject to personal jurisdiction” and because the misrepresentations and material omissions “giving rise to claim[s] occurred” have been committed in this federal judicial district, and the defendant resides and regularly conducts business in this district.

15. Intradistrict Assignment: Assignment to the San Jose division of the Court is proper pursuant to Northern District of California Local Rule 3-2(d) because a substantial part of the events giving rise to the claims arose in this District.

### **III. FACTUAL ALLEGATIONS**

#### A. Apple Releases the iPhone 5 and the iOS 6 Operating System.

16. Since the first Apple iPhone was released in 2007, Apple has achieved unparalleled success in creating a product with a strong global following. With each subsequent generation of iPhone, consumers have been impressed by yet another technological breakthrough that revolutionizes the market for mobile devices. As a result, consumers rely on Apple's representations on how its devices will operate and what to do if there is flaw in the product.

17. Since introducing the iPhone, Apple has prospered. Before the introduction of the iPhone 5, Apple had taken in over \$50 billion in revenue from iPhone sales.<sup>5</sup> As of March, 2015, it

<sup>5</sup> Seth Fiegerman, *Apple and Samsung Just Revealed Their Exact U.S. Sales Figures For the First Time Ever*, Businessinsider.com (Aug. 10, 2012) <http://www.businessinsider.com/apple-and-samsung-just-revealed-their-exact-us-sales-figures-for-the-first-ever-time-2012-8> (last visited Nov. 20, 2015).

1 is estimated that 94 million iPhones were being used in the United States.<sup>6</sup> That breaks down to  
 2 approximately one phone for every three people living in the United States. Its stock price has more  
 3 than quintupled from less than \$19.00 per share to over \$109.00 per share and Apple has become the  
 4 world's most valuable company by market capitalization.<sup>7</sup>

5       18. In September 2012, Apple announced the release of the iPhone 5 to a full house at  
 6 San Francisco's Yerba Buena Center for the Arts. As the next generation in the iPhone line, the  
 7 iPhone 5 represented the culmination of years of research and development. Thinner, lighter, faster,  
 8 and more powerful than any previous iPhone, Apple's senior vice president for worldwide marketing,  
 9 Phil Schiller touted the iPhone 5 as being a significant advancement in almost every way over its  
 10 predecessor, the iPhone 4S and described the iPhone 5 as "the most beautiful product we have ever  
 11 created-bar none."<sup>8</sup>

12       19. Beyond its external aesthetic appeal, the iPhone 5 was entirely new on the inside. The  
 13 iPhone 5 featured brand new hardware including the new A6 chip. The A6 chip was novel in two  
 14 primary ways. First, it included the new Swift CPU. This CPU, responsible for the basic  
 15 functionality of the phone, was an improved version of the CPU over prior generations of iPhones.  
 16 Second, the A6 contained a brand new tri-core GPU. GPU's are electronic circuits specially  
 17 designed to convert data into images, animations, and graphics. The iPhone 5's powerful new GPU  
 18 was more efficient at processing large blocks of visual data compared to GPU's in previous iPhones.  
 19 As a result, iPhone 5 users could enjoy a significantly enhanced video streaming experience  
 20 including shorter buffering times and improved resolution. These performance improvements were  
 21 all achieved with a chip that was 22% smaller than its predecessor.

22  
 23  
 24       

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<sup>6</sup> Don Reisinger, *iPhones in use in the US Rise to 94m new study suggests*, CNET.com (May 15,  
 25 2015) <http://www.cnet.com/news/nearly-100m-iphones-in-use-in-the-us-new-study-shows/> (last visited Nov. 18, 2015).

26       <sup>7</sup> As of the drafting this complaint, Apple was trading at \$109.93 per share.  
 27 [http://finance.yahoo.com/echarts?s=AAPL+Interactive#{"range":"10y","allowChartStacking":true}](http://finance.yahoo.com/echarts?s=AAPL+Interactive#{)  
 28 (last visited Dec. 17, 2015).

29       <sup>8</sup> Youtube.com, Apple Special Event 2012- iPhone Introduction,  
 30 <https://www.youtube.com/watch?v=82dwZYw2M00> at 2:00 (last Visited Nov. 23, 2015).

20. The iPhone 5 was also the first iPhone to support both DC-HSDPA and LTE ultrafast cellular standards. This feature allowed consumers to download data at rates up to 100 Mbps over a cellular network.<sup>9</sup> In the United States, Apple partnered with AT&T, Sprint, and Verizon to support ultra-fast LTE data service for their subscribers.<sup>10</sup>

21. Beyond the introduction to LTE, the iPhone 5 also came with higher performing Wi-Fi connections which allowed users to download data at rates as fast as 150 Mbps.<sup>11</sup>

22. Indeed, Apple presented the iPhone 5 as a product that would revolutionize the user experience for mobile devices, delivering lightening fast internet and video over Wi-Fi or LTE, hundreds of new apps, a wider screen, all within a thinner phone.

23. And the driving force inside the iPhone 5 was the new iOS 6 operating system. As Phil Schiller of Apple put it, “[p]erhaps one of the most important features of iPhone is the software it runs. And we have iOS 6 – the latest version of the world’s most advanced operating system.”<sup>12</sup> While iOS 6 included was reported to include over 200 new features including Apple Maps, iOS 6 was also responsible for operating the iPhone 5’s hardware, including its powerful A6 processor.<sup>13</sup>

#### **B. Apple Releases the iPhone 5 in the Midst of Fierce Competition from Samsung.**

24. Despite the numerous changes from the prior version of iOS, Apple launched iOS 6 with the quickest development turnaround time of any of its operating systems up to that time.<sup>14</sup> While Apple tested seven beta versions of iOS 5 over a four-month period, iOS 6 was released in just over three months after testing only four beta versions.

<sup>9</sup> Youtube.com, Apple Special Event 2012- iPhone Introduction  
<https://www.youtube.com/watch?v=82dwZYw2M00> at 8:50 min (last visited Nov. 23, 2015).

<sup>10</sup> Youtube.com, Apple Special Event 2012- iPhone Introduction  
<https://www.youtube.com/watch?v=82dwZYwM00> at 10:17 min (last visited Nov. 23, 2015).

<sup>11</sup> Youtube.com, Apple Special Event 2012- iPhone Introduction  
<https://www.youtube.com/watch?v=82dwZYwM00> at 11:25 min (last visited Nov. 23, 2015).

<sup>12</sup> Youtube.com, Apple iOS 6 Presentation!!! September 12, 2012,  
<https://www.youtube.com/watch?v=GkSj7LSpADc> at 00:00 min (last visited Nov. 19, 2015).

<sup>13</sup> Apple.com, Apple Introduces iPhone 5, <http://www.apple.com/pr/library/2012/09/12Apple-Introduces-iPhone-5.html> (last visited Nov. 23, 2015).

<sup>14</sup> Donna Tam Apple's iOS 6 release date: Start your downloads on Sept. 19 CNET.COM (Sept. 12, 2015) <http://www.cnet.com/news/apples-ios-6-release-date-start-your-downloads-on-sept-19/> (last visited Nov. 19, 2015).

1       25. Apple was at least partially motivated to speed the release of the iPhone 5 by its fierce  
 2 ongoing battle with competitor Samsung. Samsung's mobile devices operated using Google's  
 3 Android operating system. Despite Apple's head start in the smartphone market, by late 2011,  
 4 43.7% of U.S. smartphone subscribers had an Android device while 27.7% had an iPhone.<sup>15</sup>  
 5 Nonetheless, the iPhone was substantially more profitable compared to any other smartphone  
 6 system.<sup>16</sup>

7       26. At stake was control of a multibillion dollar smartphone market that was in a period  
 8 of hypergrowth. Given that the smartphone industry did not exist ten years earlier, the stakes could  
 9 not have been higher.

10      27. The fight for market dominance continued with no end in sight. The competition was  
 11 so intense and the stakes were so high that the iPhone 5 and iOS 6 had to be flawless. Knowing that  
 12 disclosing a major defect that made the phones uncompetitive would erode the sales of the marquee  
 13 iPhone 5 and cause users to distrust iOS 6, which Apple was inserting into all of its new mobile  
 14 products, Apple refused to publicly admit that the new phones were fundamentally flawed.

15      **C. Partially In Response to Products Like the iPhone, AT&T Ends Unlimited Data Plans  
 16 and Moves Subscribers to Tiered Data Plans**

17      28. AT&T's service plans enable its subscribers to, among other things, access the  
 18 Internet over AT&T's mobile data network. Accessing the Internet for uses such as email and  
 19 simple web browsing requires comparatively little data to be transmitted across AT&T's network,  
 20 while uses such as GPS navigation, streaming high-definition video, and uploading and downloading  
 21 large files consume considerably more network resources.

22      29. Initially, mobile data was used almost exclusively for email and basic web browsing.  
 23 Because these transmissions required minimal network resources, data quantity was rarely a concern.  
 24 Accordingly, AT&T and its competitor carriers did not generally sell data services using a "tiered"  
 25 approach. (*i.e.*, a variety of plans offering limited quantities of data at different price points, with

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26      <sup>15</sup> Harry McCracken, *Ios v. Android: Lots of Stats, Little Clarity*, Cnet.com (Nov. 14, 2011)  
 27 http://www.cnet.com/news/ios-vs-android-lots-of-stats-little-clarity/ (last visited Dec. 1, 2015).

28      <sup>16</sup> Harry McCracken, *Ios v. Android: Lots of Stats, Little Clarity*, Cnet.com (Nov. 14, 2011)  
 http://www.cnet.com/news/ios-vs-android-lots-of-stats-little-clarity/ (last visited Dec. 1, 2015)

1 additional data available for sale as needed).<sup>17</sup> Instead, the industry standard during these earlier  
 2 years was to offer “unlimited” data access for a fixed monthly price.<sup>18</sup> This was the type of “data  
 3 plan” that AT&T offered in 2007 when Apple introduced the iPhone.<sup>19</sup>

4       30. With the introduction of the iPhone 3G in 2008, there was a fundamental revolution in  
 5 the capabilities of mobile phones which vastly increased the volume of data transmitted over wireless  
 6 networks. This revolution caused data usage on AT&T’s network to skyrocket. Between 2007 and  
 7 2011, data traffic on AT&T’s network increased 20,000 percent (and still rising).<sup>20</sup>

8       31. In June 2010, AT&T discontinued its Unlimited Data Plan for new subscribers. Since  
 9 June 2010, AT&T has offered new subscribers tiered data plans, in which subscribers select from  
 10 plans offering different data allowances at different price points.<sup>21</sup> Under tiered plans, once usage  
 11 exceeds the set allowance, additional data is provided as needed for an additional overage fee.<sup>22</sup>  
 12 Although AT&T discontinued the Unlimited Data Plan for new subscribers, it grandfathered many  
 13 existing Unlimited Data Plan subscribers allowing them to retain their fixed-price plan.<sup>23</sup> In January,  
 14 2012, while AT&T raised the cost of its least expensive data plans, AT&T also raised the data limits  
 15 included in their plans.<sup>24</sup> Thus, while an AT&T subscriber was more likely to feel the financial  
 16  
 17

18       <sup>17</sup> Brief for the Appellant at 6, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-16585  
 19 (9th Cir. Nov. 18, 2015).

20       <sup>18</sup> Brief for the Appellant at 6, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-16585  
 21 (9th Cir. Nov. 18, 2015).

22       <sup>19</sup> Brief for the Appellant at 6, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-16585  
 23 (9th Cir. Nov. 18, 2015).

24       <sup>20</sup> Brief for the Appellant at 8, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-16585  
 25 (9th Cir. Nov. 18, 2015).

26       <sup>21</sup> Brief for the Appellant at 9, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-16585  
 27 (9th Cir. Nov. 18, 2015).

28       <sup>22</sup> Brief for the Appellant at 9, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-16585  
 29 (9th Cir. Nov. 18, 2015).

30       <sup>23</sup> Brief for the Appellant at 9-10, *Federal Trade Commission v. AT&T Mobility LLC*, No. 15-  
 31 16585 (9th Cir. Nov. 18, 2015).

32       <sup>24</sup> Brian X. Chen, *AT&T Raises Data Prices for New Smartphone Customers*, New York  
 33 Times:Bits, (Jan. 19, 2012). <http://bits.blogs.nytimes.com/2012/01/19/att-data-plans/> (last visited  
 34 Nov. 20, 2015).

1 pinch of a higher data bill each month,<sup>25</sup> most AT&T plans permitted subscribers to use more data  
 2 before exceeding their limits and incurring overage fees.<sup>26</sup>

3       32. By July, 2012, AT&T reported that 27 million of AT&T's smartphone subscribers  
 4 were now on tiered pricing plans.<sup>27</sup> In that same time period, AT&T indicated that 22% of  
 5 customers purchasing iPhones were new AT&T subscribers making the iPhone a key product for  
 6 AT&T to increase its market share.<sup>28</sup>

7 **D. Users Report Explosions in their Data Usage.**

8       33. Within days of the iPhone 5's release, reports began to emerge that iOS 6 devices  
 9 were consuming large amounts of cellular data compared to devices running iOS 5.

10      34. A thread on Apple Support Communities titled "The iPhone 5 uses Cellular Data  
 11 Over Wi-Fi?" had generated hundreds of user comments before the end of September 2012. The  
 12 opening thread from a Verizon subscriber noted:

13      **DJPlayedYA**Sep 24, 2012 1:47 PM

14      The first two days after I received my iPhone 5, I racked up 400MB of Cellular  
 15 Data. 99% of the time I was using my phone, I was connected over WiFi. So I  
 16 ran a test on my own by watching a YouTube video over WiFi and then looking at  
 17 my Cellular Data under the Usage menu. Sure enough, it had gone up by around  
 18 10MB. I called into Apple Support and asked them what was going on. They  
 19 thought that it might have been a problem with my phone or my house's WiFi  
 20 connection. After them walking me through a series of tests and restores, the lady  
 21 semi-acknowledged that it could be a problem with how their phone interacts with  
 22 the new LTE network.

23      If you guys out there could keep an eye on your Cellular Usage Data, that would  
 24 be great. Maybe it's a problem with my iPhone 5, or maybe it's a much larger  
 25 problem. Seeing as I used to have unlimited data with Verizon, being charged

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26      <sup>25</sup> Matt Neuberg, *Mysterious Ios 6 Cellular Data Usage: A Deeper Look*. tidBITS.com (Oct. 24,  
 27 2012) <http://tidbits.com/article/13354> (last visited Nov. 19, 2015).

28      <sup>26</sup> Brian X. Chen, *AT&T Raises Data Prices for New Smartphone Customers*, New York Times:  
 29 Bits (Jan. 19, 2012). <http://bits.blogs.nytimes.com/2012/01/19/att-data-plans/> (last visited Nov. 20,  
 30 2015).

31      <sup>27</sup> Brian X. Chen, *AT&T Posts Higher Profit and Holds On to Its Subscribers*, New York Times  
 32 (July 24, 2012) [http://www.nytimes.com/2012/07/25/technology/att-posts-higher-profits.html?\\_r=0](http://www.nytimes.com/2012/07/25/technology/att-posts-higher-profits.html?_r=0)  
 33 (last visited Nov. 20, 2015).

34      <sup>28</sup> Brian X. Chen, *AT&T Posts Higher Profit and Holds On to Its Subscribers*, New York Times  
 35 (July 24, 2012) [http://www.nytimes.com/2012/07/25/technology/att-posts-higher-profits.html?\\_r=0](http://www.nytimes.com/2012/07/25/technology/att-posts-higher-profits.html?_r=0)  
 36 (last visited Nov. 20, 2015).

1           with everything above 2GB would be very costly for me...especially when it's not  
 2           even my fault.<sup>29</sup>

3           35. Other consumers posted comments on the same thread noting the same issues.

4           ZmeyerzSep 24, 2012 11:11 PM

5           Re: The iPhone 5 uses Cellular Data over WiFi?in response to DJPlayedYA  
 6           I have seen the same issue on the two iPhones 5's I have. I agree with the spotty  
 7           wifi connection theory. The phones don't seem to stay connected to wifi. So  
 8           when it drops the wifi connection LTE takes over and racks up the cell data  
 9           consumption. I work from home on wifi all day and my first full day of work  
 10          after getting my new phone it used 30mb. It should have used 0 for this time  
 11          period. I just upgraded from the iPhone 4 and this want not an issue. Apple there  
 12          is an issue please fix it!!!<sup>30</sup>

13           John CapraSep 27, 2012 2:15 PM

14           Re: The iPhone 5 uses Cellular Data over WiFi?in response to Zmeyerz

15          I a on ATT with an iphone 5 and my cellular data since 9/21 is 3.3gb, tons more  
 16          than ive ever used in my life and with no explanation. My theory is that there was  
 17          a feature in an ios6 beta called "Wifi + Cellular Data" where the wifi signal was  
 18          still always supported by cellular if the wifi signal weakened. It doesnt look like  
 19          the feature made it to the final IOS 6 build but i think that there are pieces of the  
 20          code that havent been properly cleaned up and are being activated. This is either  
 21          being exacerbated by the wifi issues or causing them IMO.<sup>31</sup>

22           Lawrence FinchSep 28, 2012 12:09 PM

23           Re: The iPhone 5 uses Cellular Data over WiFi?in response to seven8nine

24          On any iPhone W-Fiis turned off when the phone is asleep (when the screen is  
 25          off), so any background apps will use cellular data, unless the phone is plugged in  
 26          to power.<sup>32</sup>

27           LazykinsSep 28, 2012 7:45 PM

28           Re: The iPhone 5 uses Cellular Data over WiFi?in response to Gamtu

29          Gamtu, you could keep your phone plugged in at night. If your phone is asleep, it  
 30          will revert to cellular data unless plugged in. The tech guy guy suggested to me  
 31          that some functions of the phone use the cellular data if they don't like the quality  
 32          of the wifi. If there are hiccups in your wifi connection, they can, for example,  
 33          finish a large download using cellular data. He also hinted that not everything is

<sup>29</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
<https://discussions.apple.com/thread/4348072?start=0&tstart=0> (last visited Nov. 30, 2015).

<sup>30</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
<https://discussions.apple.com/thread/4348072?start=0&tstart=0> (last visited Nov. 30, 2015).

<sup>31</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
<https://discussions.apple.com/thread/4348072?start=15&tstart=0> (last visited Nov. 30, 2015).

<sup>32</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
<https://discussions.apple.com/thread/4348072?start=30&tstart=0> (last visited Nov. 30, 2015).

ceased by turning cellular data off. I have not seen any evidence of that yet. When I turn it off, I see no usage, even overnight.<sup>33</sup>

36. On September 29, 2012, TidBITS.com, an Apple-dedicated news site reported numerous tweets on Twitter complaining about data usage over cellular networks after installing iOS 6 or acquiring an iPhone 5.<sup>34</sup> One tweeter indicated that he had contacted AT&T regarding the issue and that the AT&T representative recommended that he turn off cellular data when his phone is in idle mode i.e. standby.<sup>35</sup> While AT&T's proposal may have been expedient, it was not a real solution since it did not address the reasonable consumer's expectation that Apple's newest operating system could properly manage cellular data usage in a Wi-Fi area.<sup>36</sup> Commenters proposed disabling Wi-Fi for specific applications as well. While this may have limited data usage on a per application basis, it did not solve the underlying defect that was an inherent part of the iOS operating system.

**E. While Failing to Disclose the Defect's Existence, Apple Repairs the Defect for Verizon Subscribers**

37. On October 1, 2012, CNN reported that while Apple had not commented formally on the Defect, Apple wrote in a posting that it had created a software update which “resolves an issue in which, under certain circumstances, iPhone 5 may use Verizon cellular data while the phone is connected to a Wi-Fi network.”<sup>37</sup> Verizon also indicated that it would not charge users for any data issues related to the defect.<sup>38</sup> While CNN also reported that AT&T users were also experiencing surges in data use with iOS 6, there was no indication that Apple had created a software update that

<sup>33</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?, <https://discussions.apple.com/thread/4348072?start=60&tstart=0> (last visited Nov. 30, 2015).

<sup>34</sup> Glenn Fleishman, *What's Behind Mysterious Ios 6 Cellular Data Usage*, tidBITS, (Sept. 29, 2012) <http://tidbits.com/article/13304>, (last visited Nov. 19, 2015).

<sup>35</sup> Glenn Fleishman, *What's Behind Mysterious Ios 6 Cellular Data Usage*, tidBITS, (Sept. 29, 2012) <http://tidbits.com/article/13304>, (last visited Nov. 19, 2015).

<sup>36</sup> The article even describes this solution as “crazy making.” Glenn Fleishman, *What’s Behind Mysterious iOS 6 Cellular Data Usage*, tidBITS, (Sept. 29, 2012) <http://tidbits.com/article/13304>, (last visited Nov. 19, 2015).

<sup>37</sup> Money.cnn.com, <http://money.cnn.com/2012/10/01/technology/iphone-5-data-coverage/index.html> (last visited Nov. 19, 2012).

<sup>38</sup> Money.cnn.com, <http://money.cnn.com/2012/10/01/technology/iphone-5-data-coverage/index.html> (last visited Nov. 19, 2012).

1 would remedy the issue for AT&T subscribers.<sup>39</sup> Thus, Apple was clearly on notice of and able to  
 2 remedy the Defect. Despite being material to the reasonable consumer, Apple chose not to inform  
 3 AT&T iPhone 5 consumer about the Defect. Moreover, while Apple moved to promptly repair the  
 4 Defect for Verizon subscribers, Apple deliberately refrained from repairing the Defect for AT&T  
 5 subscribers.

6       38. In addition, the iPhone 5 was already facing significant criticism about the Apple  
 7 Maps program.<sup>40</sup> In fact, Apple terminated longtime executive Scott Forstall over the Apple Maps  
 8 debacle, and Apple CEO Timothy Cook publicly apologized for its shortcomings.<sup>41</sup> The last thing  
 9 Apple wanted to do now was admit that the very operating system it was touting as being  
 10 revolutionary was actually seriously flawed in a way that would cost its customers much more than  
 11 using the rival Android platforms used by Samsung: its chief competitor.

12       39. Moreover, Apple knew it could implement a software update for Verizon subscribers  
 13 while simultaneously withholding such an update for AT&T subscribers because the iPhone 5's are  
 14 slightly different for different carriers. For example, Verizon operates on the Code Division Multiple  
 15 Access (CDMA) radio system while AT&T operated on the Global System for Mobiles (GSM) radio  
 16 system.<sup>42</sup> Neither the iPhone 5 nor the iPhone 5s were designed to be compatible with both systems.  
 17 Thus, a repair to iPhone 5 and iPhone 5s' on Verizon's CDMA network would have no effect on  
 18 Apple Devices on AT&T's GSM network.

19       40. By late October, 2012, a follow up story ran on TidBITS.com which noted that the  
 20 increasing reports regarding use of cellular data while connected to Wi-Fi networks was "becoming  
 21

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22       <sup>39</sup> Money.cnn.com, <http://money.cnn.com/2012/10/01/technology/iphone-5-data-coverage/index.html> (last visited Nov. 19, 2012).

23       <sup>40</sup> Brian X. Chen and Nick Wingfield, *Apple Fires a Manager Over Its Misfire on Maps*, New  
 24 York Times: Bits, [http://bits.blogs.nytimes.com/2012/11/27/apple-fires-maps-manager/?\\_r=0](http://bits.blogs.nytimes.com/2012/11/27/apple-fires-maps-manager/?_r=0) (last  
 25 visited Dec. 1, 2015).

26       <sup>41</sup> Brian X. Chen and Nick Wingfield, *Apple Fires a Manager Over Its Misfire on Maps*, New  
 27 York Times: Bits, [http://bits.blogs.nytimes.com/2012/11/27/apple-fires-maps-manager/?\\_r=0](http://bits.blogs.nytimes.com/2012/11/27/apple-fires-maps-manager/?_r=0) (last  
 28 visited Dec. 1, 2015).

29       <sup>42</sup>Sascha Segan, *CDMA vs. GSM: What's the Difference?* Pcmag.com, (Feb. 6, 2015)  
 30 <http://www.pcmag.com/article2/0,2817,2407896,00.asp> (last visited Nov. 30, 2015).

more and more difficult to ignore.”<sup>43</sup> The article indicated that even members of the TidBITS staff believed that they had experienced the phenomenon.<sup>44</sup> Moreover, the TidBITS article noted two key modes of consumer behavior related to smartphones such as the iPhone 5. First, consumers pay a set price per month for a specified amount of cellular data on the AT&T network. To exceed that limit was expensive enough that consumers were careful to avoid exceeding that limit. Thus, “[f]or my iPhone to cost me money gratuitously, beyond whatever control I can achieve through such care, is wrong.”<sup>45</sup> Second, consumers expect that when a “[mobile] device has a Wi-Fi connection...it will use virtually *no* cellular data...This expectation is both reasonable, because if it is violated there is a danger that you can exceed your data cap...and deeply ingrained, because that is demonstrably just how iOS 5 and earlier systems behaved.”<sup>46</sup>

41. These axioms are concise articulations of how a reasonable consumer would expect their cutting edge mobile device to operate. As previously discussed, AT&T’s move away from unlimited data was widely known such that Apple was certainly aware that AT&T had moved away from offering subscribers unlimited data plans. Because the Defect resulted in significant data overcharges for iPhone 5 users, Apple knew that the effects of the Defect were material to the reasonable consumer. Moreover, Apple knew that consumers would be damaged when their mobile devices automatically switched away from a Wi-Fi system to cellular when they were streaming large amounts of data. Correspondingly, a reasonable consumer can expect that Apple would disclose material information about the Defect and that it would properly design its devices and/or fix them so they would not cause financial damage to consumers.

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<sup>43</sup> Matt Neuberg, *Mysterious Ios 6 Cellular Data Usage: A Deeper Look*. tidBITS, (Oct. 24, 2012) <http://tidbits.com/article/13354> (last visited Nov. 19, 2015).

<sup>44</sup> Matt Neuberg, *Mysterious Ios 6 Cellular Data Usage: A Deeper Look*. tidBITS, (Oct. 24, 2012) <http://tidbits.com/article/13354> (last visited Nov. 19, 2015).

<sup>45</sup> Matt Neuberg, *Mysterious Ios 6 Cellular Data Usage: A Deeper Look*. tidBITS, (Oct. 24, 2012) <http://tidbits.com/article/13354> (last visited Nov. 19, 2015).

<sup>46</sup> Matt Neuberg, *Mysterious Ios 6 Cellular Data Usage: A Deeper Look*. tidBITS, (Oct. 24, 2012) <http://tidbits.com/article/13354> (last visited Nov. 19, 2015).

42. Apple was keenly aware that its consumers purchased their iPhone 5 running on iOS 6 because its consumers sought to enjoy the benefits of Apple's most advanced technology. Because these mobile devices were built to stream movies and music, to support graphic intensive videogames and three-dimensional maps, consumers can reasonably expect that these products will perform these basic functions using available Wi-Fi signals instead of switching over to cellular. This is particularly true because Apple itself informed the public that the Apple 5 was capable of streaming data via Wi-Fi up to 50% faster compared to cellular.

43. The TidBITS.com follow up story concluded, in part, that “iOS 6 does use more cellular data than previous systems did, and it appears to use it in circumstances where previous systems did not...Something must be done, and I have little doubt that it will be.”<sup>47</sup>

44. Instead, the Defect persisted for iPhone AT&T subscribers into and through 2013 and later throughout 2014. Through this entire time period, Apple made no formal comment and completely failed to provide any disclosures to consumers about the Defect.<sup>48</sup> Even though Apple had issued a patch for the Defect for Verizon subscribers, consumers running the iPhone 5 on the AT&T network had no idea if or when a patch would ever be issued for them. AT&T also never offered public comment on the issue. If subscribers called AT&T regarding the overage, AT&T would often issue the subscriber a credit. However, subscribers had to contact AT&T to receive the credit.<sup>49</sup> To consistently contact their carrier to remedy billing issues resulting from Apple's undisclosed technical failure is not the consumers' burden. Apple was responsible for notifying consumers about the Defect and taking the necessary steps to remedy its effects, including

<sup>47</sup> Matt Neuberg, *Mysterious Ios 6 Cellular Data Usage: A Deeper Look*. tidBITS, (Oct. 24, 2012) <http://tidbits.com/article/13354> (last visited Nov. 19, 2015).

<sup>48</sup> Steve Rosenbaum, *ATT and Apple Battle Over Data Leakage*, Forbes.com (May 28, 2013) <http://www.forbes.com/sites/stevenrosenbaum/2013/05/28/att-and-apple-battle-over-data-leakage/3/> (last visited Nov. 19, 2015).

<sup>49</sup> Steve Rosenbaum, *ATT iPhone Customers Hit with Massive Data Bug*, huffingtonpost.com, (Oct. 13, 2012) [http://www.huffingtonpost.com/steve-rosenbaum/att-iphone-customers-hit\\_b\\_1963505.html](http://www.huffingtonpost.com/steve-rosenbaum/att-iphone-customers-hit_b_1963505.html) (last visited Nov. 19, 2015).

1 reimbursing them for the hefty unexpected data charges that the incurred unknowingly. Apple did  
 2 neither.<sup>50</sup>

3 **F. Despite Indications of a Repair, the Problem Persists for AT&T Subscribers Through  
 4 the Release of iOS 7 and iPhone 5s**

5 45. In June, 2013, a report on Huffingtonpost.com indicated that Apple updated iOS to  
 6 6.1.4.<sup>51</sup> Insodoing, the report indicated that Apple had finally solved the Defect for AT&T  
 7 subscribers.<sup>52</sup> Still, Apple materially omitted and failed to disclose that there was Defect. Apple  
 8 hoped the problem would blow over undetected as though the Defect had never occurred.

9 46. Nonetheless, consumers continued reporting problems on message boards.  
 10 As late as fall of 2014, after the release of the iPhone 5s, AT&T subscribers were still taking to the  
 11 same message thread to note the complaints that their Apple Devices were using cellular data when  
 12 they were in the vicinity of a Wi-Fi signal. By this point, each of the Apple Devices had been  
 13 released with various versions of iOS 6 or 7, or iOS 8.0.

14 **Itsmethebee**

15 Sep 4, 2014 5:22 PM

16 [Re: The iPhone 5 uses Cellular Data over WiFi?](#)

17 in response to truerock

18 Like I said, I have 2 iPhones that are working perfectly and 1 that has this  
 19 issue. I wouldn't know how to start reproducing this (nor do I want to) in  
 20 the other 2 iPhones. All 3 are on the latest iOS 7 patch. The first post in  
 21 this thread was posted almost 2 years ago. The problem has been  
 22 discussed and re-hashed 1000+ times. It's patently clear that this is not a  
 23 problem with how we use the phone.

I was hoping that someone who had the issue could point me to a  
 solution. I'm disappointed to find out that after 2 years, a problem that  
 started with iOS 6 is still happening in iOS 7 and apparently there is no fix  
 from Apple. I was looking forward to the new iPhone 6. Not going to

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24 <sup>50</sup> Steve Rosenbaum, *ATT and Apple Battle Over Data Leakage*, Forbes.com (May 28, 2013)  
<http://www.forbes.com/sites/stevenrosenbaum/2013/05/28/att-and-apple-battle-over-data-leakage/3/>  
 (last visited Nov. 19, 2015).

25 <sup>51</sup> Steve Rosenbaum, *ATT And Apple Data Leakage Battle Continues*, huffingtonpost.com (June  
 26 15, 2013) [http://www.huffingtonpost.com/steve-rosenbaum/att-and-apple-data-leakag\\_b\\_3447553.html](http://www.huffingtonpost.com/steve-rosenbaum/att-and-apple-data-leakag_b_3447553.html) (last visited Nov. 19, 2015).

27 <sup>52</sup> Steve Rosenbaum, *ATT And Apple Data Leakage Battle Continues*, huffingtonpost.com (June  
 28 15, 2013) [http://www.huffingtonpost.com/steve-rosenbaum/att-and-apple-data-leakag\\_b\\_3447553.html](http://www.huffingtonpost.com/steve-rosenbaum/att-and-apple-data-leakag_b_3447553.html) (last visited Nov. 19, 2015).

1 happen if such a critical issue can drag on for 2 years... and apparently  
2 people are OK with it? Because it's Apple?<sup>53</sup>

3 **Itsmethebee**

4 Sep 5, 2014 12:04 PM

5 **Re: The iPhone 5 uses Cellular Data over WiFi?**

6 in response to shohidulfromdhaka

7 I've confirmed that my iPhone can connect via WiFi. When at home, it's  
8 connected via WiFi. It works even with data switched off. No matter how  
9 many apps I have, and how badly I "miss-configure" them to access the  
internet or unnecessarily backup stuff to iCloud,  
all that data should be going via WiFi. Yet, when I look at my ATT bill, I  
see my phone using cellular data every 3 hours, connected to WiFior not.  
The period doesn't matter

(others have reported their phones accessing data every 6 hours, etc. I  
think that's carrier dependent). What's significant is that some of those  
data usage happens in the wee hours, like 3am, when I'm sleeping (so no  
intentional phone activity) and the phone is connected  
to Wi-Fi because it's at home, next to me.

If the theory that when the phone goes to sleep (stand-by), the WiFi  
disconnects is correct, that in itself would be an even more serious  
problem (if that's by design). I don't believe that's true. There was a big  
hoopla in the iOS 6 days, and they issued a fix specifically to  
address that. That's why truerock can't reproduce it.

So, why is it that cellular data is being used at all (as reported by ATT and  
charged to My account) when the phone is connected to WiFi?<sup>54</sup>

17 **knight1994**

18 Oct 8, 2014 7:48 PM

19 **Re: The iPhone 5 uses Cellular Data over WiFi?**

in response to DJPlayedYA

20 No reason to let this subject die. I just upgraded to three IPhone 5s and  
blew through my data in 1 week. After reading many of the posts and  
spending an hour on chat with Apple, looks like the best solution is to turn  
data off.

21 Completely ridiculous IMHO. Hopeful for a more useful solution from  
Apple in the near future. Maybe less than two years.

22 Unbelievable this thread has gone this long with no reasonable solution  
from Apple.

23 Thanks alot.<sup>55</sup>

24

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25

26 <sup>53</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
27 https://discussions.apple.com/thread/4348072?start=1125&tstart=0 (last visited Dec. 1, 2015).

27 <sup>54</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
28 https://discussions.apple.com/thread/4348072?start=1125&tstart=0 (last visited Dec. 1, 2015).

1           47. In fact, it does not appear that the Defect was finally resolved until the  
 2 release of iOS 8.1 on October 20, 2014. After this release, consumer complaints regarding the issue  
 3 finally declined precipitously suggesting that as consumers increasingly downloaded iOS 8.1, fewer  
 4 consumers were experiencing the hidden data charges that resulted from Apple Devices using earlier  
 5 versions of iOS. Throughout this lengthy period beginning with the iPhone 5's introduction more  
 6 than two years earlier, Apple never disclosed the existence of the Defect to consumers.

#### 7                          **IV. CLASS ACTION ALLEGATIONS**

8           48. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Palmer seeks  
 9 certification of a Class defined as follows:

10                 All AT&T wireless subscribers who purchased the Apple Devices  
 11 during the four years prior to the filing of the complaint which ran on  
 any version of iOS 6 or 7, or iOS 8.0.

12           49. Excluded from the Class are Defendant; the officers, directors or employees of  
 13 Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal  
 14 representative, heir or assign of Defendant. Also, excluded from the Class are any federal, state or  
 15 local governmental entities, any judicial officer presiding over this action and the members of his/her  
 16 immediate family and judicial staff, and any juror assigned to this action.

17           50. Plaintiff Palmer does not know the exact number of Class members at the present  
 18 time. However, due to the nature of the trade and commerce involved, there appear to be hundreds  
 19 of thousands of Class members such that joinder of all Class members is impracticable.

20           51. The Class is easily determined by objective criteria permitting self-identification in  
 21 response to notice, and notice can be provided through techniques similar to those customarily used  
 22 in other consumer fraud cases and complex class actions, and through Apple's business records.

23           52. There are questions of both law and fact common to the Class. Defendant's unlawful  
 24 omissions similarly impact Class members, all of who purchased one or more Apple Devices.

25           53. Plaintiff Palmer asserts claims that are typical of the Class. Plaintiff Palmer and all  
 26 Class members have been subjected to the same wrongful conduct because they all have purchased

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27                 <sup>55</sup> Discussions.Apple.com, The iPhone 5 uses Cellular Data Over Wifi?,  
 28 <https://discussions.apple.com/thread/4348072?start=1125&tstart=0> (last visited Dec. 1, 2015).

1 Apple Devices that were marketed and sold with any version of Apple software containing the  
 2 Defect. As a result, and like other members of the Class, Plaintiff Palmer purchased and paid an  
 3 amount for Apple Devices which they otherwise would not have paid.

4 54. As a purchaser and user of at least one Apple Device, Plaintiff Palmer will fairly and  
 5 adequately represent and protect the interests of the Class. Plaintiff Palmer and the Class are  
 6 represented by counsel competent and experienced in both consumer protection and class action  
 7 litigation.

8 55. Class certification is appropriate because Defendant has acted on grounds that apply  
 9 generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate  
 10 respecting the Class as a whole.

11 56. Class certification is also appropriate because common questions of law and fact  
 12 substantially predominate over any questions that may affect only individual members of the Class,  
 13 including, *inter alia*, the following:

- 14       a. Whether the Defect affected each version of iOS 6 or 7 and/or  
        with iOS 8.0;
- 15       b. Whether Defendant failed to disclose in their advertising that  
        the Defect would disable Wi-Fi when the CPU was not being  
        used;
- 16       c. Whether Defendant failed to disclose in their advertising that  
        the Defect would cause the Apple Devices to stream data  
        through cellular signals without consumers' knowledge;
- 17       d. Whether Defendant had a duty to disclose that the Defect  
        caused the sleeping CPU to trigger the iPhone's software to  
        disable Wi-Fi;
- 18       e. Whether Defendant had a duty to disclose that the Defect  
        would cause the Apple Devices to stream data through cellular  
        signals without consumers' knowledge;
- 19       f. Whether Defendant had a duty to disclose material facts  
        regarding all versions of iOS 6 iOS 7's and iOS 8.0's failure to  
        disable Wi-Fi when the CPU went into sleep mode;
- 20       g. Whether Defendant's nondisclosures would be material to a  
        reasonable consumer;
- 21       h. Whether Defendant's nondisclosures were likely to deceive a  
        reasonable consumer;

- 1                   i.     Whether Defendant's conduct violates the UCL, FAL and  
2                   CLRA;
- 3                   j.     Whether the challenged practices harmed Plaintiff Palmer and  
4                   members of the Class; and
- 5                   k.     Whether Plaintiff Palmer and members of the Class are entitled  
6                   to damages, restitution, equitable relief, and/or injunctive relief.

7               57.    A class action is superior to other available methods for the fair and efficient  
8               adjudication of this controversy, since joinder of all the individual Class members is impracticable.  
9               Furthermore, because the restitution and/or damages suffered, and continue to be suffered, by each  
10          individual Class member may be relatively small, the expense and burden of individual litigation  
11          would make it very difficult, if not impossible, for individual Class members to redress the wrongs  
12          done to each of them individually and the burden imposed on the judicial system would be  
13          enormous.

14       58.    The prosecution of separate actions by the individual Class members would create a  
15          risk of inconsistent or varying adjudications, which would establish incompatible standards of  
16          conduct for Defendant. In contrast, a class action is manageable, conserves judicial resources and  
17          the parties' resources, and protects the rights of each Class member.

## 18               V.     CAUSES OF ACTION

### 19               **FIRST CAUSE OF ACTION** 20               **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW** 21               **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

22       59.    Plaintiff realleges and incorporates by reference all paragraphs alleged herein.  
23       60.    Plaintiff Palmer brings this claim on behalf of himself and all Class members.  
24       61.    Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair, or fraudulent  
25          business act or practice." Defendant has engaged in unlawful, and unfair, and fraudulent business  
26          acts and practices in violation of the UCL.

27       62.    Defendant has violated the unlawful prong by virtue of their violations of the CLRA  
28          and FAL as described below.

29       63.    Apple has violated the unfair prong of section 17200 because the acts and practices  
30          set forth in the Complaint offend established public policy supporting truth in advertising to

1 consumers. Defendant's conduct is immoral, unethical, oppressive, unscrupulous, and injurious to  
 2 consumers. The harm that these acts and practices cause to consumers greatly outweighs any  
 3 benefits associated with them. Apple's conduct also impairs competition within the market for smart  
 4 phones. Because Apple never disclosed the Defect, Plaintiff Palmer and Class members did not  
 5 make fully informed decisions about the kind of smart phones to purchase or the price to pay for  
 6 such products. Plaintiff and the Class did not know that the iPhone 5 came with a hidden monthly  
 7 surcharge in the form of increased data charges on their phone bills due to the Defect.

8       64.     Defendant has violated the fraudulent prong of section 17200 because their material  
 9 misrepresentations and omissions were likely to deceive a reasonable consumer and the true facts  
 10 would be material to a reasonable consumer.

11       65.     As alleged herein, Apple's advertising for the Apple Devices creates the impression  
 12 of providing consumers with the most advanced software and hardware available and therefore a  
 13 superior quality mobile device on which consumers may reasonably rely on to perform at a high  
 14 level, without hidden costs. Apple materially admits and failed to disclose in its advertisements for  
 15 Apple Devices that it does not ensure that all versions of iOS 6 and 7 and iOS 8.0 would prevent the  
 16 Apple Device's CPUs from triggering the Wi-Fi connection to sever when it went into sleep mode so  
 17 that it would instead stream data over the AT&T cellular network without the subscribers'  
 18 knowledge and causing the consumer to incur significant data charges.

19       66.     Apple had a duty to disclose that the Defect in the Apple Devices does not ensure that  
 20 all versions of iOS 6 and 7 and iOS 8.0 and that it disabled the Wi-Fi when the CPU went into sleep  
 21 mode. This duty arises from (1) its exclusive knowledge of all versions of iOS 6 and 7's design and  
 22 iOS 8.0's design and the hardware contained within the Apple Devices; and (2) its partial  
 23 representations and/or misrepresentations to the contrary in its advertising, *i.e.*, that the Apple  
 24 Devices include the most advance technology available for mobile devices.

25       67.     Apple had a duty to disclose that the Defect in the Apple Devices resulted in  
 26 consumers streaming data over the AT&T cellular network without the subscribers' knowledge,  
 27 arising from (1) its exclusive knowledge of iOS 6 and 7's design and iOS 8.0's design and the  
 28 hardware contained within the Apple Devices; and (2) its partial representations and/or

1 misrepresentations to the contrary in its advertising, *i.e.*, that the Apple Devices include the most  
 2 advance technology available for mobile devices.

3       68.     Apple failed to disclose that it does not ensure that all versions of iOS 6 and 7 and  
 4 iOS 8.0 would prevent the Apple Device's CPUs from triggering the Wi-Fi connection to sever when  
 5 it went into sleep mode thereby disabling Wi-Fi connections.

6       69.     Apple failed to disclose that it does not ensure that all versions of iOS 6 and 7 and  
 7 iOS 8.0 would cause Apple Devices to stream data over the AT&T cellular network without the  
 8 subscribers' knowledge.

9       70.     Apple's omissions are material. Because of the resulting data overcharges, reasonable  
 10 consumers would consider the misrepresented and omitted facts (including the failure to ensure that  
 11 all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the  
 12 Wi-Fi connection to sever when it went into sleep mode thereby disabling their Wi-Fi connections  
 13 so that the Apple Devices would stream data over the AT&T cellular network without the  
 14 subscribers' knowledge) to be important in determining whether or not to purchase Apple Devices.

15       71.     Reasonable consumers were likely to be deceived, and were in fact misled, by  
 16 Defendant's misrepresentations and omissions.

17       72.     Apple knows or reasonably should know that the marketing and sale of its Apple  
 18 Devices was and is deceptive.

19       73.     Plaintiff Palmer has suffered injury in fact, including the loss of money, as a result of  
 20 Defendant's unlawful, unfair, and/or deceptive practices. Plaintiff Palmer and members of the Class  
 21 were directly and proximately injured by Apple's conduct and lost money as a result of Apple's  
 22 material misrepresentations and/or omissions, because they would not have purchased or paid as  
 23 much for Apple Devices had they known that Apple does not ensure that all versions of iOS 6 and 7  
 24 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the Wi-Fi connection to sever  
 25 when it went into sleep mode thereby disabling Wi-Fi connections so that the Apple Devices would  
 26 instead stream data over the AT&T cellular network without the subscribers' knowledge.

74. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California and nationwide.

75. Plaintiff request that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing its unfair and deceptive business practices, to restore to Plaintiff Palmer and members of the Class any money that Defendant acquired by unfair competition, and to provide such other relief as set forth below.

**SECOND CAUSE OF ACTION  
VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT  
(CAL. CIV. CODE § 1750, et seq.)**

76. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

77. Plaintiff Palmer brings this claim on behalf of herself and all Class members.

78. Defendants are “persons” under Cal. Civ. Code § 1761(c).

79. Plaintiff Palmer and Class members are “consumers,” as defined by Cal. Civ. Code § 1761(d), who purchased Apple Devices, which are “goods or services” under Cal. Civ. Code § 1770(a).

80. Cal. Civ. Code § 1770(a)(2) prohibits “[m]isrepresenting the source, sponsorship, approval, or certification of goods or services.”

81. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have....”

82. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”

83. Apple violated these CLRA provisions by misrepresenting the sponsorship, approval, certification, characteristics, benefits, standards, and quality of its Apple Devices and omitting disclosure of material aspects thereof in its advertising.

84. As alleged herein, Apple creates the impression of providing consumers with the most advanced software and hardware available and therefore a superior quality mobile device on which

1 consumers may reasonably rely to perform at a high level, without hidden costs. Apple materially  
 2 omits and failed to disclose for Apple Devices that it does not ensure that all versions of iOS 6 and 7  
 3 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the Wi-Fi connection to sever  
 4 when it went into sleep mode resulting in the Apple Devices streaming data over the AT&T cellular  
 5 network without the subscribers' knowledge and resulted in data overcharges incurred by consumers.

6       85.     Apple had a duty to disclose in its advertising for Apple Devices that it does not  
 7 ensure that all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's CPUs from  
 8 triggering the Wi-Fi connection to sever when it went into sleep mode, arising from (1) its exclusive  
 9 knowledge of all versions of iOS 6 and 7's design and iOS 8.0's design and the hardware contained  
 10 within the Apple Devices; and (2) its partial representations and/or misrepresentations to the contrary  
 11 in its advertising, *i.e.*, that the Apple Devices include the most advance technology available for  
 12 mobile devices.

13       86.     Apple had a duty to disclose in its advertising the Apple Devices to stream data over  
 14 the AT&T cellular network without the subscribers' knowledge, arising from (1) its exclusive  
 15 knowledge of iOS 6 and 7's design and iOS 8.0's design and the hardware contained within the  
 16 Apple Devices; and (2) its partial representations and/or misrepresentations to the contrary in its  
 17 advertising, *i.e.*, that the Apple Devices include the most advance technology available for mobile  
 18 devices.

19       87.     Apple's omissions are material. Because of the resulting data overcharges, reasonable  
 20 consumers would consider the misrepresented and omitted facts (including the failure to ensure that  
 21 all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the  
 22 Wi-Fi connection to sever when it went into sleep mode, thereby disabling Wi-Fi and allowing the  
 23 Apple Devices to stream data over the AT&T cellular network without the subscribers' knowledge)  
 24 to be important in determining whether or not to purchase Apple Devices.

25       88.     Reasonable consumers were likely to be deceived, and were in fact misled, by  
 26 Defendant's misrepresentations and omissions.

27       89.     Apple knows or reasonably should know that the marketing and sale of its Apple  
 28 Devices was and is deceptive.

1           90. Plaintiff Palmer and members of the Class were directly and proximately injured by  
 2 Apple's conduct and lost money as a result of Apple's material misrepresentations and/or omissions,  
 3 because they would not have purchased or paid as much for Apple Devices had they known that  
 4 Apple does not ensure that all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's  
 5 CPUs from triggering the Wi-Fi connection to sever when it went into sleep mode, thereby disabling  
 6 Wi-Fi and allowing the Apple Devices to stream data over the AT&T cellular network without the  
 7 subscribers' knowledge.

8           91. Plaintiff Palmer and members of the Class were also directly and proximately injured  
 9 by Apple's conduct and lost money as a result of Apple's material misrepresentations and/or  
 10 omissions, because they incurred additional data costs without their knowledge.

11          92. Plaintiff Palmer and members of the Class were also directly and proximately injured  
 12 by Apple's conduct and lost money as a result of Apple's material misrepresentations and/or  
 13 omissions, because they incurred additional data costs without their knowledge.

14          93. All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
 15 conduct of Defendant's business. Defendant's wrongful conduct is part of a general practice that is  
 16 still being perpetuated and repeated.

17          94. In accordance with Civil Code § 1780 (a), Plaintiff Palmer and members of the Class  
 18 seek injunctive and equitable relief for Apple's violations of the CLRA, including an injunction to  
 19 enjoin Apple from continuing its deceptive advertising and sales practices. In addition, after mailing  
 20 appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiff Palmer will  
 21 amend this Class Action Complaint to include a request for damages. Plaintiff Palmer and members  
 22 of the Class request that this Court enter such orders or judgments as may be necessary to restore to  
 23 any person in interest any money which may have been acquired by means of such unfair business  
 24 practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code  
 25 § 1780 and the Prayer for Relief.

26          95. Plaintiff Palmer includes an affidavit with this Complaint reflecting that venue in this  
 27 District is proper, to the extent such an affidavit is required by Cal. Civ. Code § 1780(d) in federal  
 28 court.

## **THIRD CAUSE OF ACTION**

## **VIOLATIONS OF THE FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)**

96. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

97. Plaintiff Palmer brings this claim on behalf of himself and all Class members.

98. California Business & Professions Code §§ 17500, *et seq.* (the “FAL”) broadly proscribes deceptive advertising in this State. Section 17500 makes it unlawful for any corporation intending to sell products or perform services to make any statement in advertising those products or services concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or not to sell those products or services as advertised at the price stated therein, or as so advertised.

99. When the seller has a duty to disclose material facts about a product, the sale of the product to consumers without disclosure of such material facts runs afoul of the FAL.

100. As alleged herein, Apple's advertising for the Apple Devices creates the impression that Apple is providing consumers with the most advanced software and hardware available and that its products are a superior quality mobile device. Apple failed to disclose in its advertisements for Apple Devices that it does not ensure that all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the Wi-Fi connection to sever when it went into sleep mode, thereby disabling Wi-Fi and allowing the Apple Devices to stream data over the AT&T cellular network without the subscribers' knowledge.

101. Apple had a duty to disclose in its advertising for Apple Devices that it does not ensure that all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the Wi-Fi connection to sever when it went into sleep mode thereby disabling Wi-Fi, arising from (1) its exclusive knowledge of all versions of iOS 6 and 7's design and iOS 8.0's design and the hardware contained within the Apple Devices; and (2) its partial representations and/or misrepresentations to the contrary in its advertising, *i.e.*, that the Apple Devices include the most advance technology available for mobile devices.

1           102. Apple had a duty to disclose in its advertising the Apple Devices to stream data over  
 2 the AT&T cellular network without the subscribers' knowledge, arising from (1) its exclusive  
 3 knowledge of iOS 6 and 7's design and iOS 8.0's design and the hardware contained within the  
 4 Apple Devices; and (2) its partial representations and/or misrepresentations to the contrary in its  
 5 advertising, *i.e.*, that the Apple Devices include the most advance technology available for mobile  
 6 devices.

7           103. Apple's omissions are material. Because of the resulting data overcharges, reasonable  
 8 consumers would consider the misrepresented and omitted facts (including the failure to ensure that  
 9 all versions of iOS 6 and 7 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the  
 10 Wi-Fi connection to sever when it went into sleep mode thereby disabling Wi-Fi and allowing the  
 11 Apple Devices to stream data over the AT&T cellular network without the subscribers' knowledge)  
 12 to be important in determining whether or not to purchase Apple Devices.

13           104. Reasonable consumers were likely to be deceived, and were in fact misled, by  
 14 Defendant's misrepresentations and omissions.

15           105. Apple knows or reasonably should know that the marketing and sale of its Apple  
 16 Devices was and is deceptive.

17           106. Plaintiff Palmer has suffered injury in fact, including the loss of money, as a result of  
 18 Defendant's unlawful, unfair, and/or deceptive practices. Plaintiff Palmer and members of the Class  
 19 were directly and proximately injured by Apple's conduct and lost money as a result of Apple's  
 20 material misrepresentations and/or omissions, because they would not have purchased or paid as  
 21 much for Apple Devices had they known that Apple does not ensure that all versions of iOS 6 and 7  
 22 and iOS 8.0 would prevent the Apple Device's CPUs from triggering the Wi-Fi connection to sever  
 23 when it went into sleep mode thereby disabling Wi-Fi and allowing the Apple Devices to stream data  
 24 over the AT&T cellular network without the subscribers' knowledge.

25           107. Plaintiff Palmer and members of the Class were also directly and proximately injured  
 26 by Apple's conduct and lost money as a result of Apple's material misrepresentations and/or  
 27 omissions, because they incurred additional data costs without their knowledge.

108. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California and nationwide.

109. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing its unfair and deceptive business practices, to restore to Plaintiff Palmer and members of the Class any money that Defendant acquired by unfair competition, and to provide such other relief as set forth below.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Palmer, individually and on behalf of all others similarly situated, respectfully request that this Court enter a judgment against Defendant and in favor of Plaintiff, and grant the following relief:

A. Determine that this action may be maintained as a Class action with respect to the Class identified herein and certify it as such under Rules 23(b)(2) and/or 23(b)(3), or alternatively certify all issues and claims that are appropriately certified, and designate and appoint Plaintiff Palmer as Class Representatives and her counsel as Class Counsel;

B. Declare, adjudge and decree the conduct of the Defendant as alleged herein to be unlawful, unfair and/or deceptive;

C. Enjoin Defendant from continuing the unfair and deceptive marketing and sale of their Apple Devices;

D. Award Plaintiff Palmer and the Class monetary relief in the form of restitution or damages resulting from Defendant's illegal business practices.

E. Award Plaintiff and the Class reasonable attorneys' fees, costs, and pre- and post-judgment interest; and

F. Award Plaintiff and the Class such other further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

## **JURY TRIAL DEMAND**

Plaintiff, by counsel, requests a trial by jury for all claims so triable.

1  
2 DATED: December 17, 2015

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